

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JEFFREY R. McKEE,

Plaintiff,

v.

ROB McKENNA, TIMOTHY LANG,  
SARA DiVITTORIO, AMANDA  
MIGCHELBRINK, ELDON VAIL,  
DAN PACHOLKE, DEVON SCHRUM,  
PAT GLEBE, KERRY ARLOW,  
CHARLES L. JONES, DENNIS  
DAHNE, DONALD BLOOMBERG,  
DENNIS CHERRY, GREGORY F.  
JONES, NORMAN GOODENOUGH,  
SHANE M. REVEL, SERGEANT POE,  
ABRAM CLARK, KEVEN SWOPE,  
TODD E. GOODWIN, TIMOTHY  
McCANDLESS, RICHARD  
BARRETT, and C/O TODD,

Defendants.

NO. C12-5125 RJB/KLS

ORDER GRANTING DEFENDANTS'  
MOTION TO AMEND ANSWER

Before the Court is Defendants' motion to amend its answer to add the affirmative defenses of release of claims and statute of limitations. ECF No. 34. Plaintiff has filed no response to Defendants' motion. The Court finds that the motion should be granted.

**BACKGROUND**

Plaintiff filed a civil rights complaint on March 1, 2012, against a number of Department of Corrections (DOC) and Attorney General's Office employees. ECF No. 6. In his complaint, Plaintiff alleged a variety of constitutional violations and state tort actions. *Id.* All Defendants, with the exception of Ms. Di Vittorio and Ms. Schrum, answered the complaint on May 1, 2012, reserving their right to allege additional affirmative defenses.

ECF No. 31. After filing the answer, Defendants' counsel learned that many of Plaintiff's claims may be barred by a prior release he signed in a previous action and the expiration of the statute of limitations. Defendants now move to amend the answer in order to add the affirmative defenses of legal release of claims and statute of limitations. ECF No. 34. Simultaneous with the filing of this motion, Defendants filed a motion for summary judgment and a motion to stay discovery. ECF No. 35. Those motions are noted for July 13, 2012. *Id.* Plaintiff has filed a response (ECF No. 36) and Defendants filed a reply (ECF No. 37).

### DISCUSSION

Fed. R. Civ. P. 15(a)(2) provides that "the court should freely give leave [to amend] when justice so requires." Plaintiff will not be prejudiced by the proposed amendment as legal release of claims and statute of limitations are purely legal issues, which should be resolved at the earliest possible stage of litigation. *See Anderson v. Creighton*, 483 U.S. 635, 646 n. 6, 107 S. Ct. 3034 (1987). Because the affirmative defenses do not raise issues of fact, there is no need for discovery on these issues. Plaintiff is also not prejudiced by the timing of the proposed amendment. Defendants asserted these defenses in their motion for summary judgment (ECF No. 35) filed on June 19, 2012 and Plaintiff has had a full opportunity to respond to the assertion of these defenses in his response (ECF No. 36).

Accordingly, it is **ORDERED**:

- (1) Defendants' Motion to Amend (ECF NO. 34) is **GRANTED**;
- (2) The Clerk shall send a copy of this Order to Plaintiff and counsel for Defendants.

**DATED** this 1st day of August, 2012.



Karen L. Strombom  
United States Magistrate Judge